



Prisoners of process: The development of remand prisoner rates in the Nordic countries

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Abstract

Imprisonment on remand entails the detention of persons suspected of crime. Despite representing the most intrusive procedural measure in modern criminal justice systems, the use of remand in the Nordic context has remained unexplored. This article fills this empirical gap by exploring how the remand populations have developed in Sweden, Norway, Denmark and Finland, and how these rates have been influenced by the number of individuals placed on remand and the length of their detention. The analysis identifies a common trend of increasing remand rates from the 1990s until 2010, which reflects a reduced number of individuals imprisoned on remand but for longer periods of time. Beyond this, significant variations are observed in the use of remand over time in the Nordic region, which cannot easily be explained by differences in remand legislation or the use of prison sentences. The article argues that the Nordic remand populations should largely be understood as administrative-political constructs and highlights the impact of prolonged pre-trial detention on the nature of punishment, fundamental justice principles and human rights. Finally, the article emphasizes the need for further research into the use of remand in the Nordic context.

Keywords

remand imprisonment, pre-trial detention, prison population, penal policy, human rights

Introduction

Imprisonment on remand is a coercive measure that involves the detention of individuals suspected of offences during the criminal justice process. Since remand targets individuals with a right to be presumed innocent and can last for extended periods of time, it is the most intrusive procedural measure in modern criminal justice systems. Despite this, remand imprisonment has generally been overlooked in criminology (Morgenstern, 2013). In the Nordic context, remand has mainly received scholarly attention as a result of the common practice of subjecting persons imprisoned on remand to restrictions in their right to associate with other detainees and have contact with the outside world (Smith, 2017). Since restrictions often lead to the isolation of those subjected to them, and render them susceptible to its well-documented negative effects (Lobel & Smith, 2019; Shalev, 2008), this practice has been strongly criticized since the early 1990s by international human rights monitoring bodies (Evans & Morgan, 1998; Smith, 2017). The remand practices in the Nordic countries have therefore been argued to constitute a deviation from these countries' otherwise humanitarian penal regimes – as suggested by the thesis of penal exceptionalism

(Pratt, 2008) – and have served as an argument against the claims of this thesis (Barker, 2013; Smith, 2011, 2017).

Actual developments in the practice of imprisoning unsentenced individuals have remained unexplored in Nordic comparative criminology, however. This article fills this empirical gap by providing the first longitudinal analysis of the remand rates in Sweden, Norway, Denmark and Finland. Its aim is to describe how Nordic remand populations have developed over time, dating at most back to 1965 and at least back to 1979, until 2020. The article also explores how these rates have been influenced by the number of individuals placed on remand and the length of detention, and whether variations and similarities can be explained on the basis of remand legislation and the use of prison sentences.

The findings indicate the presence of both general and country-specific trends in the Nordic remand rates. The main, common trend observed includes the substantial increases in the absolute remand populations between the 1990s and 2010. These increases were primarily the result of longer periods of detention rather than increases in the number of persons placed on remand, indicating that fewer individuals are being imprisoned on remand but for extended periods of time in the Nordic region. From 2010 onwards, however, the trends of the remand rates have diverged, with decreases in Norway, stability in Finland and increases in Sweden and Denmark. The Nordic countries further exhibit large differences in the extent to which remand has been used over time, which cannot easily be attributed to variations in remand legislation or the use of prison sentences. From these findings, it is suggested that the Nordic remand populations should largely be understood as administrative-political constructs. Although further research is required to more comprehensively investigate the dynamics of remand rates, it is argued that the extended periods of detention identified in this article may have significant implications for the nature of punishment in the Nordic context. Moreover, these developments raise important questions regarding fundamental justice principles and human rights.

Characteristics, conditions and consequences of imprisonment on remand

Remand imprisonment – also referred to as remand detention, remand in custody or pre-trial detention – is a coercive measure that involves depriving individuals suspected of crime of their liberty. Given that its main purpose is to protect the criminal justice process from obstruction, its function is procedural rather than punitive. Remand imprisonment is also advocated on the grounds of public security, as it can be used to prevent persons suspected of crime from offending during an ongoing investigation. Since remand is applied to individuals who are merely suspected rather than convicted of crime, the benefits of imposing remand must be carefully weighed against the integrity of the suspect. This balancing act, at least in principle, is guided by the fundamental justice principles of proportionality and the presumption of innocence, and that remand should be used as a measure of last resort (*ultima ratio*) (Duff, 2013; Hammerschick et al., 2017). Nonetheless, remand prisoners generally comprise a substantial part of national prison populations. On a given day, roughly one in four incarcerated persons in Europe is imprisoned on remand (Aebi et al., 2022). There are, however, large variations with the proportion of unsentenced persons among the total prison population, which varies between eight and 50% in Europe (microstates excluded, Aebi et al., 2022). With the exception of Denmark, where a relatively high proportion of individuals held on remand comprise the total prison population (41%), the proportion in Finland, Norway and Sweden are close to the European average (22%, 23% and 28% respectively, Aebi et al., 2022).

Given the presumption of innocence, it is generally thought that persons imprisoned on remand should be granted particular rights and safeguards to protect them from unnecessary infringements (CPT, 2017). Whether these rights are granted and upheld is questionable, however. As has been noted by the European Council's anti-torture committee (CPT),

remand prisoners in particular are all too often held in dilapidated and overcrowded cells and are frequently subjected to an impoverished regime. In a number of visit reports, the CPT has taken the view that the conditions of detention of remand prisoners in the establishments visited were totally unacceptable and could easily be considered to be inhuman and degrading. (CPT, 2017, p. 1)

These impoverished regimes – which include a lack of meaningful activities, human interaction and opportunities to spend time outside the cell and outdoors – have led to the conclusion that the conditions of incarceration for unsentenced persons are often worse than for persons convicted of crime (Morgenstern, 2013). This also applies in countries with otherwise relatively humane prison conditions, such as the Nordic countries, which have been strongly criticized by the CPT for the use of restrictions and the repressive conditions that follow from these (Evans & Morgan, 1998; Smith, 2017).

Being held on remand may have several collateral negative consequences (Rabinowitz, 2021). It has, in fact, been found that unsentenced persons 'experience their imprisonment as most painful' (Crewe et al. 2022, p. 440). During their imprisonment, individuals on remand are susceptible to the general 'pains' associated with imprisonment (Sykes, 1958; Crewe, 2011), including losses of autonomy, relationships, work, and housing (Anderson et al., 2021; Wakefield & Andersen, 2020), which often extend to children and close relatives (Smith, 2014). Since remand constitutes the initial stage of incarceration, the contrast between freedom and imprisonment is particularly palpable and stressful for the individual (Pelvin, 2017). Being on remand is also largely defined by uncertainty and the distress that follows from not knowing how long the period of incarceration will last and what its outcome will be (Freeman & Seymour, 2010). Perhaps the most alarming feature of the associated negative mental health outcomes is found in the high suicide rates noted among individuals on remand, which far exceed those of the general population and incarcerated persons who are convicted (Zhong et al., 2021).

Despite these factors, remand imprisonment has remained largely unexplored in criminological research. As Smith (2017) notes, one explanation for this may be related to the procedural rather than punitive function of the remand institution. However, remand does often constitute at least a part of the sentence as the time spent on remand is deducted from prison sentences. By extension, this means that the use of remand may substantially affect both the mode and length of punishments, particularly when it is used for extensive periods of time. Further, even though remand is a 'provisional' measure (Morgenstern, 2013), it still entails the imprisonment of legally innocent individuals in often impoverished incarceration regimes and with potential detrimental consequences. These features are serious enough from a human rights perspective, but are made even more so by the fact that not all persons imprisoned on remand subsequently receive a custodial sentence or indeed any sentence at all. A study of remanded young adults and children in Sweden with a minimum follow-up period of three months found that 46% did not receive a sanction administered by the Prison and Probation Service (Kriminalvården, 2022). In addition, cases of monetary compensation following an unlawful deprivation of liberty have increased by almost 200% since the early 2000s in Sweden and Denmark (see the Swedish Chancellor of Justice and the Danish Director of Public Prosecutions, annual reports). Given these characteristics,

the use of remand has substantial consequences for the nature of punishment, and also raises ‘important questions from the point of view of fundamental rights, especially liberty, proportionality and the presumption of innocence’ (Martufi & Peristeridou, 2022, p. 358).

Influences on remand rates

Persons imprisoned on remand generally account for a substantial part of countries’ penal populations. Nevertheless, large variations apply in countries’ remand rates. One key to understanding these differences lies in identifying the societal factors that influence the use of remand. Drawing on previous research conducted on the influences of remand rates, Table 1 summarizes four central dimensions that need to be considered: crime, policy, administration and the penal-political climate.

The structure and development of crime may influence remand rates in several ways. This is particularly evident with regard to factors associated with cases that qualify for the imposition of remand, which include serious offences and cases in which an obstruction of the investigation is deemed likely, or where bail is likely to be refused (Bamford et al., 1999). The extent to which remand is imposed may also be influenced by changes in the characteristics of suspects, including foreigners and those who have prior convictions (Morgenstern, 2013; Wermink et al., 2022).

Table 1. Dimensions and examples of factors that may influence remand rates

Influences on remand rates				
<i>Dimension</i>	Crime	Policy	Administration	Penal-political climate
<i>Factors</i>	<ul style="list-style-type: none"> • Frequency • Type of crime • Suspects <ul style="list-style-type: none"> – Foreigners – Prior convictions 	<ul style="list-style-type: none"> • Formal <ul style="list-style-type: none"> – Remand policy – Penal policy – Procedural policy • Informal <ul style="list-style-type: none"> – Application of laws – Legal culture 	<ul style="list-style-type: none"> • Efficiency <ul style="list-style-type: none"> – Investigation – Trial – Appeal • Technology • Organizational priorities 	<ul style="list-style-type: none"> • Prioritized reforms • Regulation • Attitudes toward judicial principles <ul style="list-style-type: none"> – Innocence – Proportionality

Remand rates are also influenced by the laws that define which cases qualify for the imposition of remand, i.e., the legal conditions stating and regulating the aims, use, and scope of remand. Most clearly, these influences include the formulation of remand requirements, the degree of suspicion, and the offences for which remand can be applied, as defined by their sentencing tariffs. The number of persons imprisoned on remand is also influenced by whether or not there is a bail system, which is not the case in the Nordic countries, and the availability and use of alternative measures. In the Nordic context, alternatives include reporting obligations and travel bans, but their use has been claimed to be limited in Sweden, Norway, and Denmark (Smith & Jacobsen 2017; SOU 2016:52; prop. 71L 2012–2013). Statistics from Finland instead indicate a relatively extensive use of such measures, with approximately 600 travel bans imposed annually since the early 2000s (see <https://stat.fin.stat.fi/>, “Statistics on offences and coercive measures”). Electronic monitoring has generally been viewed as a more viable alternative to remand, and was introduced in Finland in 2019 (RISE, 2021), but has only been discussed in Sweden (SOU 2016:52) and Norway (Ot. prp.nr.31 2006–2007; prop. 71L 2012–2013; Regjeringen, 2023).

Since remand requirements include references to sentencing tariffs, the use of remand may be affected by reforms that affect the length of prison sentences. This means that its use is also influenced by penal legislation. It may also be affected by procedural legislation, with

the principles of immediacy and orality that apply to court cases in all the Nordic countries serving as an apt example. These principles state that the court's verdict must be based on evidence presented orally at the trial. In practice, this means that oral evidence collected during the investigation is not valued as highly as the statements made at trial. How these principles are approached, and the opportunities available to refer to previously collected evidence, may therefore influence the application of remand. Another procedural aspect that has been claimed to affect the use of remand involves the time limits placed on arrest, with longer periods of arrest being argued to enable more thorough investigations and more well-grounded assessments of the need to apply remand (see e.g., prop. 1995/96:21; Ot.prp. nr.66 2001–2002). A final and crucial policy-related aspect regards its 'informal legal conditions' (von Hofer et al., 2012), i.e., how laws are applied by criminal justice agencies. A previous comparative study exploring the ultima ratio principle in relation to remand identified large variations in approaches toward its use, which could not be derived from formal legal conditions (Hammerschick et al., 2017). Instead, the authors argued that these variations could best be explained by the discretionary powers possessed by those involved in imposing remand, emphasizing that remand requirements, as well as the notion of proportionality, are relatively fluid concepts with multiple interpretations. Similar observations have been made recently in the European context (Dhami & Van den Brink, 2022; Rogan, 2022; Smith, 2022), emphasizing that the unstructured nature of remand decision-making, discretion, and legal cultures may be central to understanding variations in remand rates.

The factors related to crime and policy mainly influence the extent to which remand is imposed. Another area that instead affects the length of remand is the administration associated with the criminal justice process, since the length is contingent on the duration of investigations, trials, and appeals. This process is further linked to law enforcement efficacy, court delays, organizational priorities, and the introduction of new technologies that enable more extensive investigations (Sarre et al., 2006). Some of these administrative factors may be linked to crime, including the character of offences and the difficulty of their investigation. They may also be related to policy, including whether there are maximum time limits for remand and other regulations. In addition, administrative priorities may also be related to the larger penal-political context (Bamford et al., 1999). General attitudes toward human rights and the presumption of innocence are not only crucial influences on the extent to which remand is imposed (Rogan 2022; Myers, 2016), but also with regard to whether remand reforms are prioritized and the extent to which remand practices are subject to regulation. One example of these types of influences is the varied responses found in the Nordic countries toward the criticism focused on subjecting persons imprisoned on remand to restrictions. Denmark and Norway have enacted strict provisions regulating the use of restrictions and, as a result, have substantially reduced their use of restrictions (Rua et al., 2019). This was not only a result of the criticism but also of extensive national debates and political pressure. As noted by Rua et al. (2019, p. 76), '[t]he situation in Sweden, where the question of restrictions has neither been politicized nor debated to the same extent, instead constitutes 'an example [showing] that decades of serious criticism can produce minimal results'.

Relatedly, the penal landscape has changed over time in the Nordic countries and has been subject to reforms in both a more and a less punitive direction. Following 'humane' and welfare-oriented reforms in the 1970s focused on decriminalization and alternatives to imprisonment (Lappi-Seppälä, 2012), the following decades were marked by a more punitive direction. The 1980s and 1990s included reforms that introduced harsher sanctions for, in particular, violence, drug, and sexual offences (Tham, 2022). Since then, the trends have been mixed, and have included reforms in both a more and less punitive direction, including

the expansion of crime control but also the introduction of electronic monitoring (Lappi-Seppälä, 2016). In addition, several societal and demographical changes have occurred over recent decades, affecting both the crime structure and societal reactions to offending (Nilsson & Bäckman, 2022). How these changes have influenced the use of remand, directly or indirectly, may be difficult to discern, but is nonetheless important to consider.

The multi-faceted societal dimensions and factors outlined in this section suggest that the dynamics that affect remand rates are highly complex. This section has provided an indicative rather than exhaustive account of this complexity. Further, the outlined factors share many similarities with factors related to convicted prisoner rates, including the strong relationship with criminal justice and social policy (Aebi & Kuhn, 2000) and the fact that prison populations are largely ‘political constructs’ as a result of the way in which sanctions and the length of prison sentences are politically determined (von Hofer, 2003). Similar factors may also influence the use of remand. However, given that the length of remand terms is determined by criminal justice bureaucracy rather than being politically prescribed, remand rates are also largely administrative constructs. While convicted prison populations arguably also reflect administrative processes, given that decisions on early release and modes of punishment can be made by state officials (Lappi-Seppälä, 2016), these processes constitute a more central factor in relation to the dynamics of remand rates. Before proceeding to explore these rates in the Nordic countries, a review of the legislation regulating the use of remand is in order.

Nordic remand legislation

The provisions regulating the use of remand imprisonment are stated in each Nordic country’s code of Judicial Procedure.¹ The purpose and fundamental principles for imposing remand are similar in the Nordic countries and have been so over time, with these involving the securement and protection of the criminal justice process or the prevention of criminal activity during ongoing investigations. The application of remand rests on a proportionality assessment, whereby the benefits of imposing remand must be weighed against the integrity of the suspect. The requirements for imposing remand include there either being a risk that the person who is suspected of crime will obstruct the criminal investigation, a risk that they will evade prosecution, for instance by fleeing the country, or a risk that the person will offend during the investigation.² In addition, the individual must be suspected on probable cause and the offence must entail a certain level of severity, defined on the basis of the sentencing tariff. Denmark has the highest threshold, with a requirement that the offence must be punishable by 18 months imprisonment to impose remand, while the threshold is twelve months in Sweden and Finland, and six months in Norway. These thresholds refer to prescribed sentences for offences rather than statutory minimum sanctions. If the person suspected of crime does not have a permanent address in the country or refuses to provide information on their identity, the remand requirements and penalty thresholds may in some cases not apply.³ Some variations also exist in relation to imposing remand for more severe offences. In Sweden and Finland, for instance, an individual suspected of a crime with a minimum sentence of two years imprisonment should be placed on remand unless there are strong reasons not to do so.

In all the Nordic countries, it is a court which decides whether remand should be imposed. None of the countries has an absolute time limit for the duration of remand.⁴ Instead, it has been argued that it follows from the proportionality principle that a period of detention should be as short as possible. To ensure this, the remand order must be reviewed continually, which is defined as every two weeks in Sweden and Finland and every four

weeks in Norway and Denmark.⁵ Further, all the Nordic countries have alternatives to remand, including travel bans and an obligation to report.⁶ An individual may be detained under arrest for four days in Sweden and Finland before the first remand hearing must be held, while the corresponding period is three days in Norway and 24 hours in Denmark.⁷

The general principles and provisions regulating the use of remand are thus generally similar in the Nordic countries. The largest difference regards the range of offences for which remand can be imposed, with Norway having a comparatively low penalty threshold, and Denmark a relatively high threshold, which would lead to an expectation of comparatively high and low remand rates in these two countries, respectively. There are also other variations of a more detailed nature, including time limits for arrests and the use of remand in cases involving more severe offences. It should also be noted that the remand requirements and the risks that need to be assessed are formulated in relatively broad terms. These provisions therefore grant relatively wide discretionary powers to those who decide whether remand should be imposed, which may lead to variations in informal legal conditions.

Method

Analytical strategy

The primary aim of the analysis is to show how the use of remand has developed in the Nordic countries. The analysis is therefore explorative, comparative, and longitudinal. The analysis is based on remand statistics in the form of both stock and flow measures from Sweden, Norway, Denmark, and Finland. These statistics enable an analysis of the trend in the size of the remand populations⁸ (stock) and an exploration of how these rates have been affected by changes in the number of remand placements (flow) and the length of time spent on remand. These trajectories are analyzed in light of variations in remand legislation, particularly regarding the extent to which remand is imposed (flow). To further explore the dynamics of remand and the extent to which it is used, remand is also analyzed in relation to the use of prison sentences. Prison sentences constitute the final stage of the criminal justice process and should, at least in principle, be the outcome of a court case following a period on remand (Hammerschick et al., 2017; Smith & Jakobsen, 2017). Therefore, they serve as an indication of the number of cases that, at least in theory, qualify for the imposition of remand. As a result, this analysis provides an important contextualization of the extent to which remand is used and whether remand placements and prison sentences have followed similar trends.

In studying statistical time series, the problems of continuity and congruence must be considered (Westfelt, 2001; von Hofer et al., 2012). The congruence problem is related to the comparability of data from different countries and whether the legislative and methodological definitions of the study object are unitary between the countries examined. The continuity problem regards the comparability of data within each time series, and whether legislative or methodological changes have rendered the data incomparable over time. These issues are discussed in more detail in the description of the data provided below.

Data

The majority of the remand statistics required extensive manual compilation work which was conducted on the basis of annual reports published by different state agencies in each Nordic country. In contrast to the larger European context, where comparisons have been difficult due to different definitions of remand (Morgenstern, 2013), the definition is unitary in the Nordic countries and involves the detention of a criminal suspect following arrest and before receiving a final sentence.

Remand populations

The available statistics in Norway, Denmark, and Finland cover the daily average number of remand prisoners. The most reliable Swedish data cover the number of remand prisoners measured on October 1 each year, and are as a result not directly comparable with the other Nordic countries. Statistics on the remand populations are available from 1979 in Denmark and 1974 in Finland. In Sweden and Norway, statistics date back further, and the period covered by data collection was therefore delineated by the availability of flow measures in these countries (from 1965 in Sweden and 1966 in Norway). With regard to congruence, it should be noted that Danish statistics also cover a minor number of individuals who are under arrest, and that the Norwegian data may involve a slight underestimation, since remand prisoners are defined as individuals who are detained for longer than three days without a registered conviction. There are no continuity problems for the Swedish, Danish or Norwegian data, but there is a problem of this kind with the Finnish time series. Between 1974 and 1994, the Finnish data cover remand prisoners detained in prisons, while from 1995 onwards, the data include those held on remand in both prisons and police custody. The figures for the period prior to 1995 therefore represent an underestimation of the total remand population (Helminen, 1989), which must be considered when interpreting the trend.

Table 2. Statistics on the remand population: content, time period, and source

Remand populations		
	Content (time period)	Source (time period)
	<i>Methodological problems</i>	
Sweden	Number of remand prisoners measured October 1 (1965–2020) <i>Congruence problem 1965–2020</i>	Swedish Prison and Probation Service (1965–1990; 2011–2020), Swedish National Council for Crime Prevention (1991–2010)
Norway	Average number of remand prisoners (1966–2020)	Statistics Norway (1966–2020)
Denmark	Average number of remand prisoners and arrestees (1979–2020)	Statistics Denmark (1979–2020)
Finland	Average number of remand prisoners detained in prisons (1974–2020); average number of remand prisoners detained in police custody (1995–2020) <i>Congruence problem 1974–1994; Continuity problem</i>	Statistics Finland (1974–2020), Criminal Sanctions Agency (1995–2020)

(See supplemental online material, “Remand populations”, for more detailed information and data).

Remand placements

The statistics on the number of remand placements are framed somewhat differently in the Nordic countries but are generally similar in their content. Statistics from Norway and Finland cover the number of remand prisoners admitted to penal institutions⁹ each year and date back to 1966 and 1974, respectively. In Sweden, available data cover remand orders, with data on the number of enforced remand orders dating back to 1994 and data on remand orders submitted by the Prosecution Authority dating back to 1965. Despite representing an overestimation of the actual number of remand placements, the analysis includes the number of submitted remand orders to provide an indication of developments in Sweden between 1965 and 1993. Finally, Danish statistics cover the number of remand admissions between 1983 and 2011, and from 2012 onwards the number of terminated remand placements. The Swedish and Danish statistics thus involve both continuity and congruence issues, which must be considered when comparing and interpreting them.

Table 3. Statistics on remand placements: content, source, and period of availability

Remand placements		
	Content (period of availability)	Source (period of availability)
<i>Methodological considerations</i>		
Sweden	Submitted remand orders (1965–1993), accepted remand orders (1994–2020) <i>Congruence problem 1965–1993; Continuity problem</i>	Swedish National Council for Crime Prevention (1965–2020)
Norway	Number of admitted remand prisoners (1966–2020)	Statistics Norway (1966–1999); Norwegian Correctional Agency (2000–2020)
Denmark	Started remand imprisonments (1983–2011), completed remand imprisonments (2012–2020) <i>Congruence problem 2012–2020; Continuity problem</i>	Director of Public Prosecutions (1983–2020)
Finland	Number of admitted remand prisoners to penal institutions (1974–2020)	Statistics Finland (1974–2020)

(See supplemental online material, “Remand placements”, for more detailed information and data).

Statistics of prison sentences

To explore the relationship between remand and prison sentences, the numbers of prison sentences imposed for criminal code offences have been collected (see supplemental online material, “I. Prison Sentences”, for more information). Because remand is generally imposed for suspected criminal code offences, the choice was made to focus on these prison sentences. Given that remand should primarily be imposed for offences punishable by longer sentences, the numbers of imposed prison sentences of six months or longer were also compiled. The six-month limit was determined by the lowest penalty threshold in the Nordic context. Even though this threshold only applies in Norway, it should be reiterated that the thresholds only state that the offence in question should be punishable by a prison term of a certain length, rather than its minimum penalty. The six-month limit should therefore be viewed as a relatively conservative indicator for Sweden, Finland, and Denmark, but still indicative of the number of cases that would qualify for the imposition of remand. Finally, stock measures of convicted prisoners were collected to explore the proportion of remand prisoners among the total incarcerated population over time. To ensure comparability within each country’s distribution of the incarcerated population, data for all the Nordic countries except Sweden cover the average number of convicted prisoners. Swedish data instead cover the number of convicted prisoners on October 1 each year, and are therefore not directly comparable with those of the other countries.

Procedure

The analysis is divided into two parts. The first part begins by exploring how the Nordic remand populations have developed over time. It then proceeds by examining how the trends of the remand rates reflect changes in the number of remand placements and the average length of detention (indicated by the quotient between the remand population and the number of remand placements multiplied by twelve; see Aebi et al., 2022). All data were standardized per 100,000 population to enable comparisons. The time period examined was determined by the availability of data, dating at most back to 1965 and at least back to 1983, and studied until 2020.

The second part of the analysis explores how the use of remand has developed in relation to flow and stock measures for prison sentences. This part of the analysis includes a presentation of relative figures. First, the number of remand placements per 100 prison sentences for criminal code offences is analyzed for the period 1983–2020. The same procedure is

then conducted for prison sentences of six months or longer. A value larger than 100 means that more individuals are held on remand than are sentenced to imprisonment. In turn, this may serve as an indication that more remand placements are imposed than the number of cases that, at least in principle, qualify for remand. Further, stability in these relative figures would reflect a common trend in remand placements and prison sentencing, respectively, while fluctuations would indicate divergence. The final part of the analysis presents trends in the proportion that remand prisoners constitute of the incarcerated population in the Nordic countries.

Results

The use of remand imprisonment

Trends in the Nordic remand populations between 1965 and 2020 are presented in Figure 1. Since 1979, when data are available for all Nordic countries, the remand rates have increased with the exception of Finland. From the early 1990s until 2010, however, the remand rates increased substantially across all Nordic countries. Following these common developments, the trends of the Nordic remand populations diverged from 2010 onwards, with significant decreases observed in Norway, stability in Finland, and increases in Sweden and Denmark. Figure 1 indicates that the Nordic remand populations differ substantially in size, whereas Denmark has consistently had the largest throughout the period examined. The Swedish remand population was the lowest at least until the mid-1980s, but has since steadily increased to become the second highest in the Nordic context in 2020.

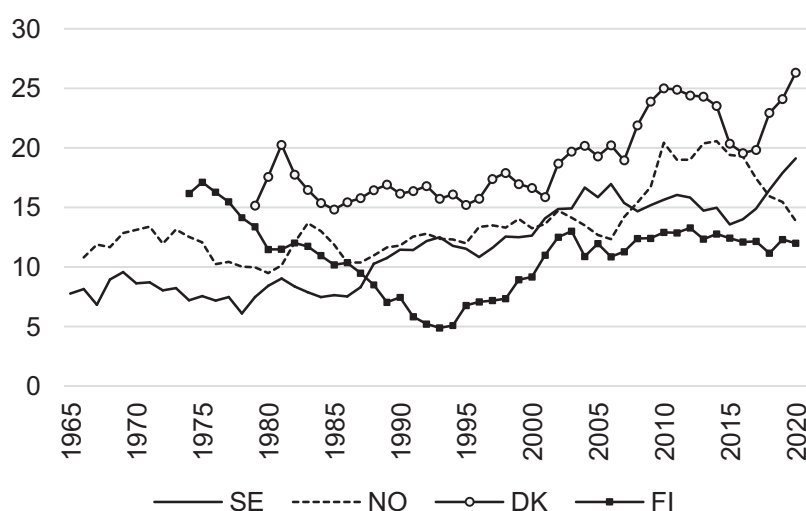


Figure 1. The Nordic countries' remand populations per 100,000 population.

Notes: Swedish figures are not directly comparable with the other Nordic countries; Finnish figures constitute an underestimation due to the exclusion of remand prisoners held in police custody between 1974 and 1994.

Remand populations are a function of the number of individuals imprisoned on remand and the length of remand placements. To explore how these factors have influenced the Nordic remand rates presented in Figure 1, Figure 2 presents the number of remand placements imposed. Since 1983, when data are available for all countries, the number of remand placements has decreased substantially in all countries except Sweden. Due to the overestimation of the actual number of remand placements in Sweden prior to 1994, it is not possible to distinguish whether this number has decreased or remained stable. Nevertheless,

it can be concluded that there have been no substantial increases in the number of remand placements in any of the Nordic countries.

Figure 2 further indicates that there are large variations in the extent to which remand has been used over time. The differences are particularly notable with regard to the frequency of imposed remand placements, where the extensive use of remand in Sweden and Denmark prior to 2012 clearly deviates from the more restrictive use of remand in Norway and Finland. Further, the use of remand has been consistently high in Sweden, which stands in contrast to the declining trends seen in the other Nordic countries.

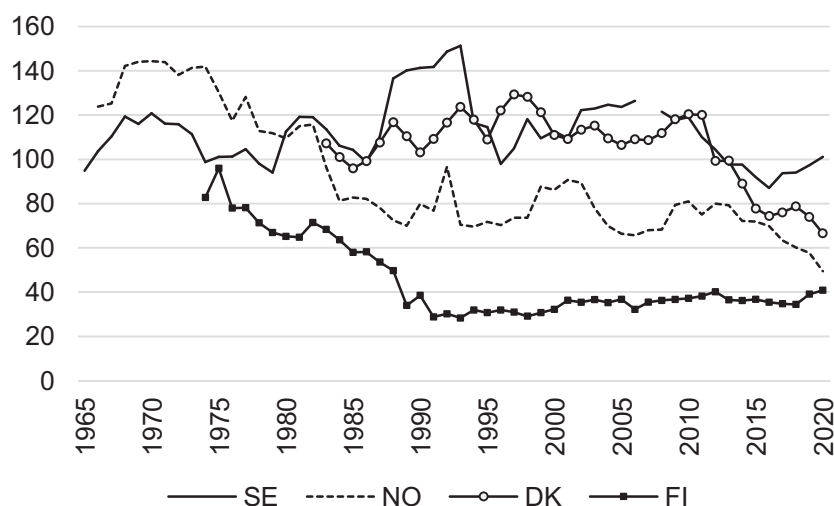


Figure 2. Number of remand placements per 100,000 population.

Notes: Swedish figures for 1965–1993 constitute an overestimation as they cover the total number of submitted rather than accepted remand orders; Danish figures for 2012–2020 cover the number of terminated remand placements and are not directly comparable to the figures for 1983–2011 or the figures from the other Nordic countries; Finnish figures are slightly underestimated due to only covering remand prisoners admitted to penal institutions and not those in police custody.

Given that the Nordic remand populations have increased while the numbers of remand placements have declined or been stable, these findings suggest that the increase in the remand populations reflects individuals being held on remand for longer periods. This is corroborated by the estimates of the average length of remand placements presented in Figure 3a. While these estimates should be viewed with caution as a result of continuity and congruence issues, they indicate substantial increases in the length of remand placements in all Nordic countries over time. In Sweden and Denmark, the average time spent on remand has more than doubled since 1995, while it has increased by 70% in Norway and 35% in Finland. Denmark has the longest remand placements on average at the end of the studied period, and Sweden the shortest. However, as indicated by Figure 3b, Sweden has the highest estimate for the total number of remand days imposed.

The statistics presented in this section indicate both similarities and differences in the development of the Nordic remand populations. While trends in the remand rates have fluctuated over time, the remand rates increased in all Nordic countries between the early 1990s and 2010. Given the stable or declining number of remand placements identified during the same time period, the increases in the remand populations reflect a trend whereby fewer persons were held on remand, but for longer. In addition, the findings indicate large differences in the extent to which remand has been imposed and the average length of

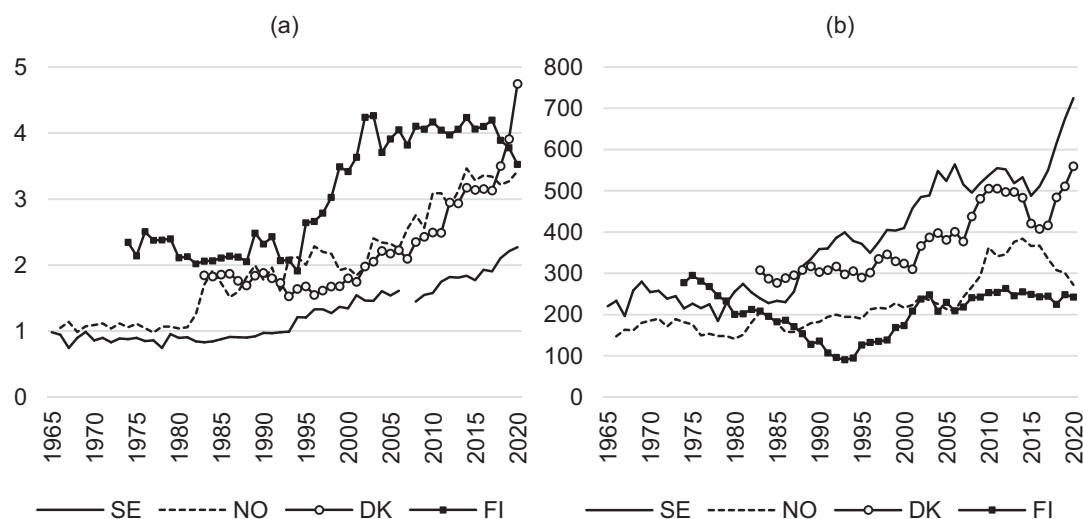


Figure 3. a) Estimation of the average length (months) of remand placements in the Nordic countries. b) Estimation of the total number of days of remand placements (thousands).

Notes: Swedish figures are not directly comparable to the other countries and also include underestimates of the length of remand placements for 1965–1993 due to an overestimation of the number of remand placements; Danish figures for 2012–2020 are not directly comparable as they cover terminated remand placements; Finnish figures are overestimated for 1974–1994 due to an underestimation of the number of remand placements.

detention, which is also reflected by the variations in the remand populations. This raises questions of how these variations can be understood. Given that the length of remand is determined by the administrative side of the justice process, it is reasonable to assume that longer remand terms are not a *direct* reflection of policy. More plausible explanatory factors may rather be found in societal factors related to trends in crime and law enforcement efficacy. The number of remand placements, on the other hand, is more directly influenced by policy-related factors, including the formulation of remand legislation. However, several unanticipated observations can be noted when viewing both levels and trajectories in the light of remand legislation. First, the relatively similar numbers of remand placements imposed in Sweden and Denmark prior to 2012 are unanticipated, since there are several differences in the remand provisions between these two countries, including their penalty thresholds, its application for more severe offences and the time limits for arrest. Second, the large differences in the use of remand between Sweden and Finland are also unanticipated from a remand policy perspective, since the two countries' remand legislation is practically identical. Thus, the divergence among the Nordic countries cannot easily be derived from differences in the remand legislation. This raises the question of whether the divergences instead reflect variations in other factors, including the offences that constitute the grounds for imposing remand. The analysis now proceeds to investigate this question by exploring the use of remand relative to prison sentences.

The relationship between remand and prison sentences

To explore the relationship between remand and prison sentences, Figure 4a shows the number of remand placements per 100 prison sentences for criminal code offences. Sweden is the only Nordic country in which more individuals are held on remand than sentenced to imprisonment for criminal code offences. This ratio has steadily increased in Sweden and Finland, which is mainly the result of relatively large decreases in prison sentences at the same time as

the numbers of remand placements have been more stable (see supplemental online material, “I. Prison sentences”). Denmark is the only country where the ratio has remained relatively stable since 1983, indicating that the numbers of remand placements and prison sentences have followed similar trends. This is also the case for Norway from 2006 onwards.

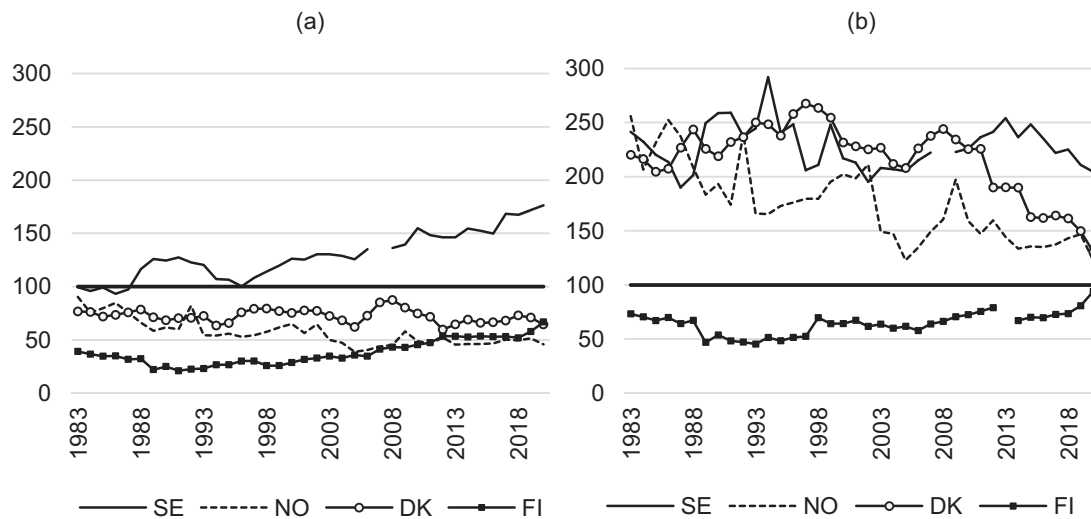


Figure 4. a) Number of remand placements per 100 prison sentences for criminal code offences. b) Number of remand placements per 100 prison sentences with ≥ 6 months' imprisonment. Values larger than 100 (indicated by the bold horizontal line) mean that the number of remand placements is higher than the number of prison sentences.

Notes: Swedish ratios are overestimated between 1983 and 1993 as a result of an overestimation of remand placements; Danish figures for 2012–2020 cover terminated remand placements.

With the exception of Sweden, more individuals are sentenced to imprisonment than held on remand. This is not surprising given that many of the prison sentences imposed in the Nordic countries are short and relate to offences that do not necessarily qualify for the use of remand. To explore the relationship between the use of remand and the number of cases that primarily qualify for remand, Figure 4b presents the number of remand placements per 100 prison sentences of at least six months. Here, the differences between Sweden, Denmark and Norway, respectively, are somewhat smaller. Finland is the only country with lower rates of remand placements than of prison sentences of at least six months. Sweden is the Nordic country with the highest number of remand placements relative to the number of longer prison sentences since 2010. Throughout the period examined, the number of remand placements in Sweden has been at least double the number of those sentenced to a prison term of at least six months. While the ratio has decreased since 2015, it is much higher than in Norway and Denmark, where the ratio has decreased to roughly 125 remand placements per 100 prison sentences of at least six months. In relation to these variations, it should be noted that the number of prison sentences of this length has been strikingly similar across the Nordic countries, and has remained relatively stable since the early 2000s (see supplemental online material, “II. Prison sentences ≥ 6 months”). Therefore, the varying ratios observed during this period largely reflect differences between the Nordic countries in the number of remand placements. These differences are particularly striking when Sweden is compared to Finland, whose levels of both prison sentences for criminal code offences and longer sentences have been strikingly similar since the 1990s.

In contrast to these variations, the proportion that remand prisoners comprise of the total Nordic prison populations have followed relatively similar trends since the early 2000s (see Figure 5a). Denmark has the highest proportion of remand prisoners throughout the period examined, and Finland the lowest. When considering the period examined as a whole, the share of remand prisoners has increased in all countries except Norway. Since 1995, when data is reliable for all Nordic countries, the share in Sweden, Finland, and Denmark has increased by more than ten percentage points and by five in Norway. These increased shares have been driven by somewhat different trends (Figure 5b), reflecting both increases in the number of remand prisoners and decreases in the number of convicted prisoners. It should also be noted that the trends seen in the convicted prison populations have been similar since the 1990s in the Nordic countries (see supplemental online material, “III. Convicted prison populations”), with decreases in those sentenced to prison being related to reductions in the number of prison sentences imposed, and an increase in the use of electronic monitoring in the home as an alternative for those sentenced to prison.

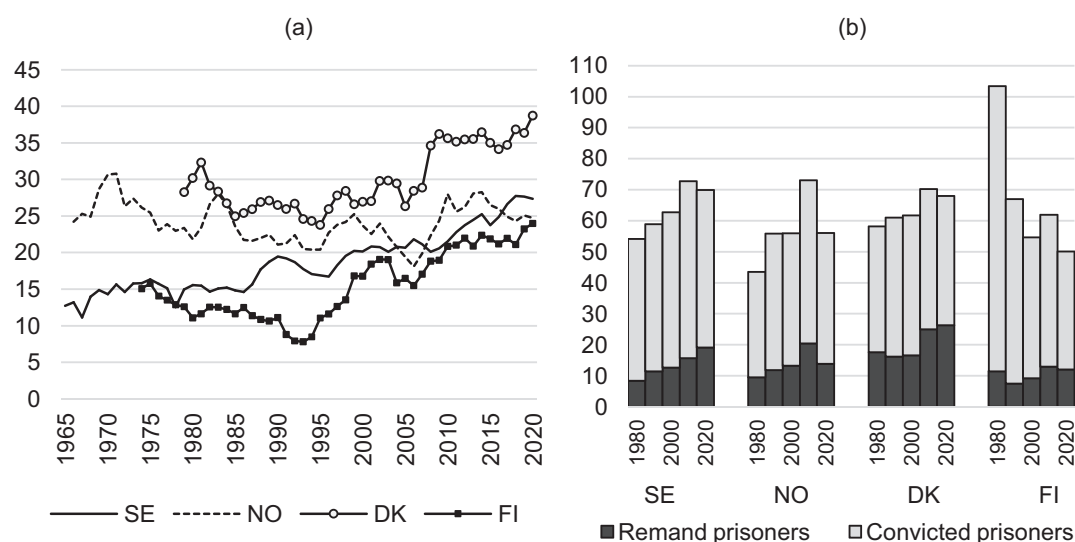


Figure 5. a) Trend of the proportion of the total prison population constituted by remand prisoners (excluding persons imprisoned for fine default). b) Number of remand and convicted prisoners per 100,000 population for each decade from 1980 to 2020.

Notes: Swedish figures not directly comparable as they cover the number of prisoners measured on October 1 each year, as opposed to the average number of prisoners per year.

Given that detention on remand is a part of the criminal justice process that should at least in principle end with a prison sentence, the use of remand relative to that of prison sentences provides an indication of the extent to which remand is used and whether there is a correspondence between the two forms of incarceration. The findings from this section demonstrate that the relationship between the use of remand and prison sentences differs across the Nordic countries. The most important observation is perhaps found in the striking similarities in the number of prison sentences of at least six months that have been imposed in the Nordic countries since the early 2000s, which stands in stark contrast to the large variations in the use of remand. This suggests that the variations found in the Nordic countries cannot easily be explained by reference to differences in prison sentencing. By extension, this indicates that the number of persons imprisoned on remand cannot easily

be explained by any substantial variation in the numbers of cases that qualify for the use of remand, which suggests a need to consider other factors.

Discussion

This article has presented an analysis of the trends in Nordic remand rates. The main, common patterns observed include increasing remand rates during the 1990s until the early 2010s, reflecting a trend toward fewer persons being imprisoned on remand but for longer periods. This large impact of the length of detention on the overall remand rates suggest that the Nordic remand populations are largely a function of administrative processes, and therefore differ somewhat from the political determinants of the convicted prison population size (von Hofer, 2003). Beyond these similarities, there are substantial differences in remand prisoner rates and trends across the Nordic region. Most notably, these include the extensive use of remand in Sweden and Denmark throughout the majority of the period examined, and more restrictive uses of remand in Norway and Finland. Another notable difference lies in the divergent trends of the Nordic remand rates since 2010, characterized by decreases in Norway, stability in Finland, and increases in Sweden and Denmark. Given that these results deviate strongly from what would be expected on the basis of the remand legislation, the conclusion is that formal remand provisions are of limited explanatory value in their own right. The analysis further revealed variations in the relationship between remand and the use of prison sentences in the Nordic countries. Given that prison sentences provide an indication of the extent to which the justice system processes cases that qualify for the use of remand, it can be concluded that the use of remand in the Nordic countries cannot be explained by any substantial variations in the numbers of these cases.

The limited explanatory value of remand legislation is perhaps not surprising given that it is only one of a number of policy-related factors that may influence the use of remand. While remand legislation in the Nordic countries has remained relatively stable over time, this is not the case for other areas of legislation. Further, even though the Nordic criminal justice processes are generally similar, a closer look at their penal systems reveals considerable diversity (Lappi-Seppälä, 2016). The ways in which these countries' penal and procedural legislation has influenced the use of remand are probably complex, but nonetheless relevant to understanding the dynamics of their remand rates. It should also be reiterated that the remand requirements are broadly formulated, and that their application may be heavily influenced by local praxis and legal culture (Hammerschick et al., 2017; Rogan, 2022; Smith, 2022). The extent to which this may affect the use of remand, and in what direction, cannot be concluded on the basis of analyses of the Nordic legal frameworks but instead calls for in-depth, qualitative explorations of the remand decision-making processes.

In addition, several limitations apply with regard to using prison sentences as an aggregate proxy for the cases that qualify for the use of remand. Even though remand should in principle result in a prison sentence, this is not always the case. It should also be noted that the penalty thresholds do not always apply when imposing remand, not least in cases where individuals who are suspected of crime lack a permanent address in the country. More in-depth analyses would be required to overcome these limitations and further explore the dynamics of the Nordic remand rates, including the grounds on which remand is imposed and in relation to what offences and suspect characteristics. These types of analyses would help to unpick more accurately the links between remand and the cases that qualify for its use. Further in-depth analyses would also yield valuable insights into the variations in the use of remand identified in this study, including the unanticipatedly high levels of remand

placements in Denmark and the dramatic decrease in the Norwegian remand rates since 2016. Finally, future research should look into the use of alternative measures and whether the comparatively restrictive use of remand in Finland might be explained by a more extensive use of travel bans.

The present article represents an important step forward in the research on remand in the Nordic context. It has provided frames of reference regarding the use of remand imprisonment over time in the Nordic region. It has shown that unsentenced persons constitute a substantial proportion of these countries' prison populations, and that substantial increases in the length of detention have occurred. In practice, these extended periods of detention mean that increasingly large parts of individuals' sentences are being served on remand. These developments may, in other words, have a considerable impact on the execution of punishments in the Nordic countries. It also means that persons who receive non-custodial sentences or no sentence at all are detained for increasingly long periods of time, which raises important questions about fundamental justice principles and human rights. Given the repressive conditions associated with being imprisoned on remand, particularly for individuals who are subject to restrictions and isolation, these developments should be taken seriously and carefully monitored to ensure that remand is used as a measure of last resort and for no longer than necessary.

Why the periods of detention in the Nordic countries have become longer is a question that remains open and that may be answered by reference to changes in the characteristics of crime, the complexity of criminal investigations and law enforcement efficacy. However, it is also important to consider these developments within the context of ongoing reforms and debates taking place in the Nordic countries. Finland was the first Nordic country to introduce electronic monitoring as an alternative to remand imprisonment in 2019 (RISE, 2021), and its introduction will be debated in Norway in 2023 (Regjeringen, 2022). The question of whether fewer individuals should be placed on remand has recently been a subject of debate in Denmark (DR, 2023). Discussions in Sweden – the country with the highest number of remand placements in the Nordic context – have instead focused on expanding the use of remand. In 2023, the remand presumption will be lowered to apply to offences with a minimum penalty of 18 months instead of two years imprisonment (prot. 2022/23:102), and the current government is seeking to lower it even further. A prognosis from 2022, which did not even consider these reforms, estimated that the Swedish remand population will increase by 13% in the coming years (Brottsförebyggande rådet et al., 2022). These divergent approaches clearly illustrate that remand rates are not only a function of crime and administrative processes. They are also political. Given the implications of remand on the nature of punishments, the rule of law, and human rights, it is imperative that criminological inquiry does not restrict its scope to the outcomes of the criminal justice process but also recognizes the practices and cases of incarceration linked to the process itself. This article has provided a step toward recognizing these practices and the persons subject to them in the Nordic context.

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Supplemental online material

Link to supplemental online material here

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Notes

1. Swedish Code of Judicial Procedures, Chapter 24; Norwegian Criminal Procedure Act, Chapter 14; Danish Administration of Justice Act, Chapter 70; Finnish Coercive Measures Act, Chapter 2.
2. Small variations do exist, see paragraphs in chapters stated in endnote 1: SE: §1; NO: §171; DK: §762; FI: §11.
3. SE: §2; NO: §173; FI: §11. In Denmark, this is assessed in relation to the risk of absconding (§762).
4. Semi-absolute time limits apply in Sweden (§4a, enacted 2021) and Denmark (§768a, enacted 2008). Since they are relatively long – nine months and six months respectively – and can be overridden if there are special reasons, they only apply to a limited number of remand imprisonments.
5. SE: §18; NO: §185; DK: §767; FI: §15.
6. SE: §4; NO: §188; DK: §765; FI: §12a and Ch. 5§1.
7. SE: §12; NO: §183; DK: §764; FI: Ch. 3§5.
8. Referring to statistics of persons imprisoned on remand in terms of *remand populations*, *remand rates* and *remand prisoners* entails the use of non-person-centered language and has the tendency to obfuscate the personhood of individuals subjected to this type of incarceration (e.g., Tran et al., 2018). These terms are, however, used for the purpose of providing a comprehensible analysis and to ensure that references to the statistics and their content are clear. The same applies to references to statistics covering persons who are serving a custodial sentence, who are referred to as convicted prisoners.
9. In Norway and Finland, remand prisoners are detained in regular prisons, as opposed to remand prisons as in Sweden (*häkte*) and Denmark (*arresthuse*).